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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH, *Petitioner*,

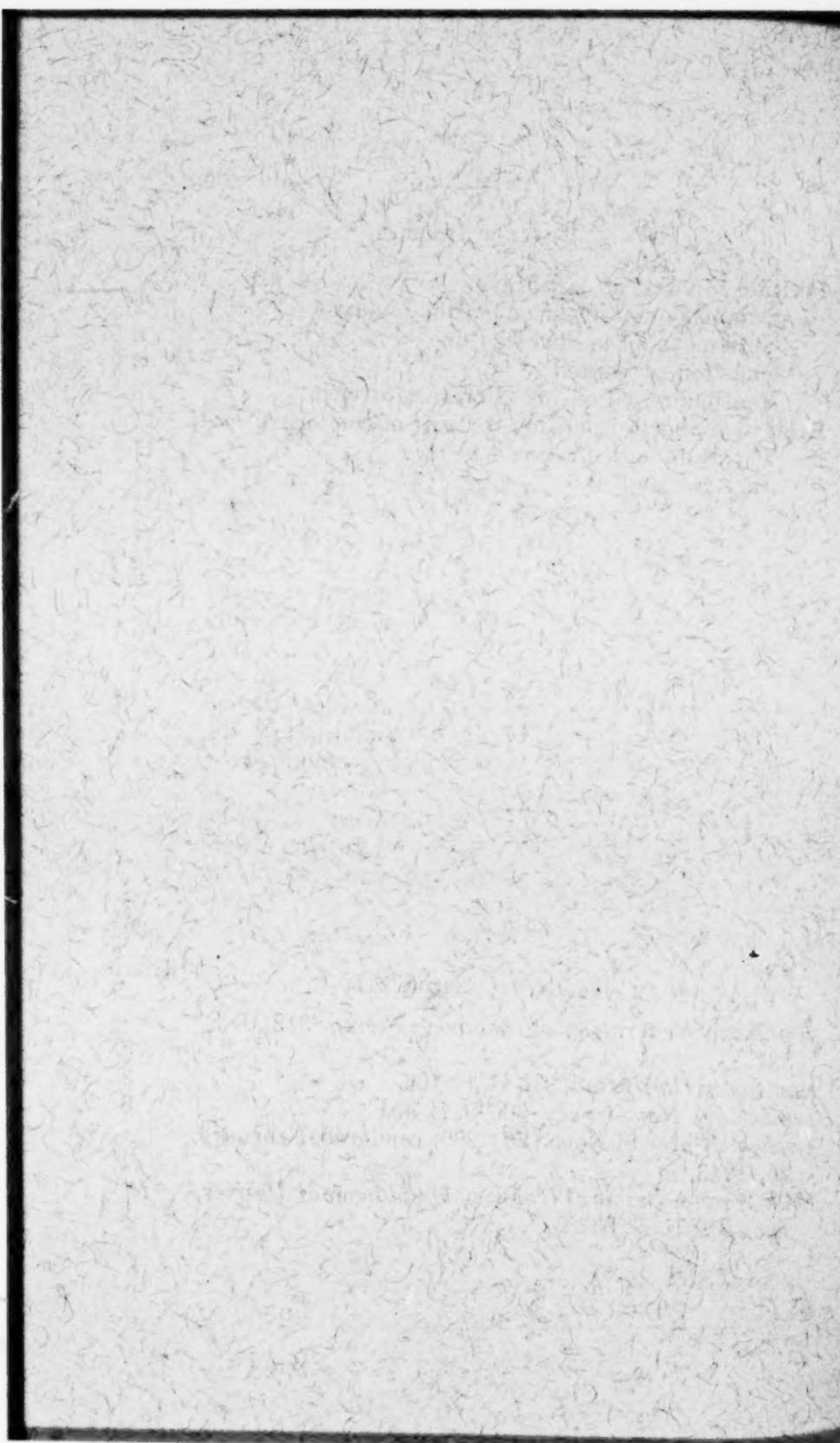
vs.

STATE OF ALABAMA.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ALABAMA
AND BRIEF IN SUPPORT THEREOF.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
MERWIN KOONCE,
Counsel for Petitioner.





INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	2
Statement as to jurisdiction	6
Question presented	8
Reasons relied on for allowance of writ	8
Brief in support of petition for writ of certiorari	11
The opinion of the court below	11
Jurisdiction	11
Statement of the case	11
Specification of errors	11
Argument	12
The statute on its face or as applied in the instant case deprives plaintiff of freedom of speech and assembly	12
If the element of violence be deemed material, petitioner was nevertheless denied due process of law in violation of the Fourteenth Amendment by conviction on a charge not made	21
Petition was denied due process of law in being convicted under a statute so vague and indefinite as not sufficiently to inform him of any crime	23
Conclusion	25

TABLE OF CASES CITED.

<i>American Federation of Labor v. Swing</i> , 312 U. S. 321	8
<i>Carlson v. California</i> , 310 U. S. 106	8
<i>Lanzetta v. New Jersey</i> , 306 U. S. 451	8
<i>Lash v. State</i> , 14 Sou. (2d) 235, rendered February 24, 1943	1
<i>Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc.</i> , 312 U. S. 287	8

	Page
<i>Thornhill v. Alabama</i> , 310 U. S. 88	3
<i>United States v. Cohen Grocery Co.</i> , 255 U. S. 81, 65 Law Ed. 516	23

STATUTES CITED.

Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Section 344-b	6
Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940)	1, 2, 6, 8, 12

SUPREME COURT OF THE UNITED STATES

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No.

JOE LASH, *Petitioner*,

vs.

STATE OF ALABAMA.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable The Justices of The Supreme Court of
the United States:*

The above named petitioner respectfully petitions for a writ of certiorari to review a decision of the Court of Appeals of Alabama (*Lash v. State*, 14 Southern (2d) 229, rendered March 16, 1943), following an advisory opinion of the Supreme Court of Alabama, (*Lash v. State*, 14 Sou. (2d) 235, rendered February 24, 1943), writ of certiorari from Court of Appeals' decision denied by the Supreme Court of Alabama on June 10, 1943, and motion for rehearing denied by the Supreme Court on June 30, 1943, which decision affirmed a judgment of the Law and Equity Court of Lauderdale County (Circuit Court) finding petitioner guilty of violation of Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940).

Summary Statement of Matter Involved.

The petitioner, Joe Lash, is a member of a labor organization (presumably Hod Carriers and Common Laborers' Union, Local No. 366, A. F. L.) affiliated with the Building Trades Council located at Sheffield, Alabama, with jurisdiction over Sheffield and surrounding towns, including Florence, Alabama.

In late September of 1941 the said Building Trades Council authorized a picket line in front of certain premises located on Olive Street in Florence, Alabama, on which a contractor by the name of C. P. Hansel was engaged in erecting four houses (R. 61-62, R. 7-8). The dispute between the unions affiliated with the Building Trades Council and the building contractor, Hansel, was that Hansel refused to employ union labor in the construction of the houses which he was erecting (R. 62, 48). The petitioner, as a member of one of the unions affiliated with the Building Trades Council, was one of a number of pickets engaged in picketing such premises. On October 16, 1941, petitioner, while peacefully picketing, was arrested upon an affidavit and warrant of arrest sworn out by the said C. P. Hansel, in which it was alleged that the said petitioner did, "without just cause or legal excuse for so doing, enter into a combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying, or preventing, C. P. Hansel from carrying on a lawful business, to-wit, the business of building houses, against the peace and dignity of the State of Alabama" (R. 1).

Said affidavit and warrant of arrest was predicated upon Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940), which provides as follows:

"Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement or understanding

for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Petitioner demurred to the complaint on the ground, among others, that said Section 3447 was violative of the United States Constitution in that it deprived defendant of the right of peaceful assembly and freedom of speech, and that it failed to inform defendant of the nature of any crime or unlawful act he might have committed (R. 3). The trial court (Law and Equity Court of Lauderdale County) overruled the demurrer and proceeded to try the case without a jury (R. 6). At the close of the case for the state petitioner moved to exclude all of the State's testimony, on the ground that said Section 3447 and the evidence taken were in violation of the Constitution of the United States (R. 43). The court overruled this motion and found the defendant "guilty of conspiracy" in violation of said Section 3447. The court sentenced petitioner to 137 days at hard labor for failure to pay a fine of \$250.00 and costs (R. 6). The finding of the court was a general one and did not specify the testimony upon which it rested.

The judgment was appealed to the Court of Appeals of Alabama, which court, after stating that said Section 3447 was, in its opinion, unconstitutional in view of the decision of the United States Supreme Court in *Thornhill v. Alabama*, 310 U. S. 88, but being without authority to declare the Act unconstitutional, certified to the Supreme Court of Alabama the question of whether said Section violated any of the provisions of the United States Constitution (R. 70, 71, 75). The Supreme Court of Alabama, in an opinion rendered February 24, 1943, determined that said section was not in violation of the United States Constitution (R. 76-84). Thereupon, the Court of Appeals of Alabama sustained the judgment of the trial court (R. 70-72). The peti-

tioner applied for a rehearing in the Court of Appeals (R. 72), which petition was denied (R. 74). Petitioner then petitioned the Supreme Court for writ of certiorari, alleging deprivation of constitutional rights (R. 84), which petition was denied by the Supreme Court of Alabama on June 10, 1943 (R. 87). Application was made for rehearing in the Supreme Court of Alabama (R. 88), and denied on June 30, 1943 (R. 92). In its denial of the application for rehearing, the court granted a stay of execution pending appeal to the Supreme Court of the United States (R. 93).

Section 3447 is a companion of Section 3448, considered and declared unconstitutional by this Court in *Thornhill v. Alabama, supra*, both sections being adopted at the same time (R. 77).

The petitioner, Joe Lash, was one of twenty-one defendants tried and convicted upon identical charges filed by the said C. P. Hansel under Section 3447. The defendants were tried separately and all were found guilty.

At the trial of the petitioner, Joe Lash, the following facts were developed: The picketing, commenced in protest of the hiring of non-union labor, began presumably on Wednesday, September 24, 1941, and lasted some three weeks, being stopped by the wholesale arrests precipitated under the warrants filed by the contractor who was being picketed (R. 1). The arrests took place on Monday, October 13th, (R. 51). Usually, there were around twenty-five pickets engaged in picketing the premises on which the four houses were being constructed (R. 9, 50). The picketing consisted of walking up and down in front of the premises and carrying signs stating the contractor was unfair to union labor. Except for several isolated instances hereinafter to be related, in which violence allegedly took place, the picketing was peaceful and the non-union employees were free to come and go as they pleased (R. 19, 50, 59, 65).

Although neither the complaint (or affidavit) nor the statute on which it was predicated contained any mention of violence or assault, testimony, disputed in part, was permitted at the trial, indicating that on two occasions persons referred to generally as "the pickets" engaged in throwing rocks at the houses which were being picketed, and on a third occasion engaged in throwing rocks at the automobiles of the non-union workers employed in constructing the houses, damaging the automobiles. It did not appear that anyone was hurt by the throwing of the rocks. It appears that on those instances when rocks were thrown large crowds of townspeople had gathered in front of the premises. It does not appear whether the stones were thrown by pickets or townspeople, no stonethrower being specifically identified (R. 11-15). Petitioner, Joe Lash, was not identified as being one of those who was engaged in throwing rocks, or was not shown to have in any way participated in any of the rock throwing, or as even being present when any alleged acts of violence took place.

The following undisputed evidence likewise appears in the record: Upon Mr. Hansel's being requested to employ union labor and sign a union contract, he replied that "he would see us dead and in Hell before he would give up and sign one of our damn contracts" (R. 48). On another occasion the said Hansel committed a deliberate assault with his automobile, running into and striking one of the pickets (R. 47, 67).

The charge against petitioner Lash was a general one, alleging solely a conspiracy to hinder, delay or prevent Hansel from carrying on a lawful business. No charge was made or evidence introduced that petitioner had used violence or had engaged in violence, or had attempted to engage in violence, or had conspired to delay or hinder Hansel

from carrying on his business by the use of violence.¹ The record and proof fails to disclose that petitioner did anything but peacefully parade up and down in front of the premises, bearing a sign stating that the contractor was unfair to union labor.

Statement as to Jurisdiction.

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Section 344-b, giving jurisdiction to this Court:

"to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by appeal any clause wherein a final judgment or decree has been rendered and passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of being repugnant to the Constitution or laws of the United States; * * *."

This case is one in which the validity of Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940) and a conviction and sentence thereunder is drawn in question upon the ground that such statute and conviction, on their face and as construed in the opinion and judgment of the Supreme Court of Alabama and the Court of Appeals of Alabama, are repugnant to the Con-

¹ There was no evidence, or any attempt to introduce evidence, that petitioner or any of the other pickets arrested under Section 3447 had, either in union meetings or on the picket line or anywhere else, conspired or agreed together to commit the violence which allegedly occurred or to commit any violence, or in any way to interfere with Hansel's business by the use of violence; on the contrary, the evidence showed that specific instructions were given to the pickets by those in charge of the picket line to conduct the picketing in a peaceful and orderly manner (R. 40).

stitution of the United States and, in particular, to the Fourteenth Amendment thereto, and to the First Amendment thereto, violations of which by the state are protected under the Fourteenth Amendment as denying petitioner liberty and property without due process of law, and denying to petitioner freedom of speech and assembly. The decisions of the Alabama Courts were in favor of the validity of the statutes and conviction. The case was finally disposed of by the courts of Alabama when the Supreme Court, on June 30th, 1943, entered its order denying application for rehearing. Every possible remedy within the state has been exhausted.

The federal questions—violation of the Constitution of the United States by depriving petitioner of liberty and property without due process and denying him freedom of speech and assembly—were raised at every possible stage of the proceedings below. Thus, the demurrer to the complaint raised the federal questions (R. 3); the motion to exclude testimony at the close of trial raised the federal questions (R. 43); the appeal from the trial court to the Court of Appeals raised the questions (which were by dictum decided in petitioner's favor) (R. 71); they were raised before and passed upon by the Supreme Court of Alabama in its decision upholding the said statute as not being in violation of the United States Constitution (R. 73); they were raised before and passed upon by the Court of Appeals of Alabama when the case was remanded to it following the decision of the State Supreme Court (R. 70); they were raised in the application for rehearing before the Court of Appeals (R. 72), which application was denied (R. 74); they were raised in petition for writ of certiorari to the Supreme Court of Alabama (R. 84), which petition was denied (R. 87); and it was raised in application for rehearing before the Supreme Court (R. 88), which application was denied (R. 92).

Questions Presented.

The following federal questions, raised and argued before the Alabama courts, are again brought forward here:

1. Is Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940) either on its face or as applied violative of petitioner's rights under the United States Constitution either as depriving of liberty or property without due process, or as denying or abridging petitioner freedom of speech and assembly?
2. Was petitioner denied due process of law in violation of the Fourteenth Amendment by conviction on a charge not made?
3. Was petitioner denied due process of law in violation of the Fourteenth Amendment by conviction under a statute so vague and indefinite as not sufficiently to inform him of the nature of the crime of which he was found guilty?

Reasons Relied On for Allowance of Writ.

The decisions of the Supreme Court of Alabama and the Court of Appeals of Alabama are in direct conflict with the decisions of this Honorable Court in *Thornhill v. Alabama, supra*; *Carlson v. California*, 310 U. S. 106; *American Federation of Labor v. Swing*, 312 U. S. 321; *Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287; and *Lanzetta v. New Jersey*, 306 U. S. 451.

WHEREFORE, Your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Alabama, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 8 Div. 240, en-

titled *Joe Lash v. State of Alabama*, and that the judgment of the Court of Appeals of Alabama, predicated upon a decision of the Supreme Court of Alabama, may be reviewed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioner will ever pray.

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